

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 213 be amended to read as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 utilities.
- 4 Page 1, between the enacting clause and line 1, begin a new
- 5 paragraph and insert:
- 6 "SECTION 1. IC 8-1-2-125 IS AMENDED TO READ AS
- 7 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 125. (a) As used in this
- 8 section, "not-for-profit utility" means a public water or sewer utility
- 9 that:
- 10 (1) does not have shareholders;
- 11 (2) does not engage in any activities for the profit of its trustees,
- 12 directors, incorporators, or members; and
- 13 (3) is organized and conducts its affairs for purposes other than
- 14 the pecuniary gain of its trustees, directors, incorporators, or
- 15 members.
- 16 (b) A not-for-profit utility shall be required to furnish reasonably
- 17 adequate services and facilities. ~~The charge made by any A~~
- 18 ~~not-for-profit utility is entitled:~~
- 19 **(1) to charge nondiscriminatory, reasonable, and just charges**
- 20 **for any service rendered or to be rendered, either directly or in**
- 21 **connection with the service; ~~must be nondiscriminatory,~~**
- 22 **reasonable, and just; and**
- 23 **(2) to the remedies set forth in section 125.1 of this chapter if**
- 24 **the charges described in subdivision (1) are not paid within**

1 **sixty (60) days after they become due.**

2 Each discriminatory, unjust, or unreasonable charge for the service is
3 prohibited and unlawful.

4 (c) A reasonable and just charge for water or sewer service within
5 the meaning of this section is a charge that will produce sufficient
6 revenue to pay all legal and other necessary expense incident to the
7 operation of the not-for-profit utility's system, including the following:

8 (1) Maintenance and repair costs.

9 (2) Operating charges.

10 (3) Interest charges on bonds or other obligations.

11 (4) Provision for a sinking fund for the liquidation of bonds or
12 other evidences of indebtedness.

13 (5) Provision for a debt service reserve for bonds or other
14 obligations in an amount not to exceed the maximum annual debt
15 service on the bonds or obligations.

16 (6) Provision of adequate funds to be used as working capital.

17 (7) Provision for making extensions and replacements.

18 (8) The payment of any taxes that may be assessed against the
19 not-for-profit utility or its property.

20 The charges must produce an income sufficient to maintain the
21 not-for-profit utility's property in sound physical and financial
22 condition to render adequate and efficient service. A rate too low to
23 meet these requirements is unlawful.

24 (d) Except as provided in subsection (e), a not-for-profit public
25 sewer utility may require connection to its sewer system of property
26 producing sewage or similar waste and require the discontinuance of
27 use of privies, cesspools, septic tanks, and similar structures, if:

28 (1) there is an available sanitary sewer within three hundred (300)
29 feet of the property line; and

30 (2) the utility has given written notice by certified mail to the
31 property owner at the address of the property at least ninety (90)
32 days before the date for connection stated in the notice.

33 (e) A ~~not-for profit~~ **not-for-profit** sewer utility may not require
34 connection to its sewer system of property producing sewage or similar
35 waste and require the discontinuance of use of privies, cesspools, septic
36 tanks, and similar structures if the source of the waste is more than five
37 hundred (500) feet from the point of connection to its sewer system.

38 SECTION 2. IC 8-1-2-125.1 IS ADDED TO THE INDIANA CODE
39 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
40 1, 2008]: **Sec. 125.1. (a) As used in this section, "not-for-profit**
41 **sewer utility" refers to a not-for-profit utility (as defined in section**
42 **125(a) of this chapter) that:**

43 (1) **is established to provide sewage disposal service (as**
44 **defined in section 89(a)(1) of this chapter); and**

45 (2) **holds a certificate of territorial authority as required by**
46 **section 89 of this chapter.**

(b) Subject to subsection (c), if any charges assessed under section 125(b) of this chapter by a not-for-profit sewer utility are not paid within sixty (60) days after they become due:

(1) the amount, together with a penalty of ten percent (10%) and a reasonable attorney's fee, may be recovered by the not-for-profit sewer utility in a civil action in the name of the not-for-profit sewer utility from the delinquent user or owner of the property served by the utility's sewage works; and

(2) the not-for-profit sewer utility may require that a water utility providing water service to a delinquent user discontinue service until payment of all overdue charges, together with any penalty allowed under subdivision (1), are received by the not-for-profit sewer utility.

(c) If charges assessed under section 125(b) of this chapter by a not-for-profit sewer utility are not paid within sixty (60) days after they become due, the not-for-profit sewer utility or the utility's designee shall send notice to the delinquent user stating:

(1) the delinquent amount due, together with any penalty;

(2) that:

(A) water service may be disconnected;

(B) the not-for-profit sewer utility may bring a civil action to recover the amount due, together with any penalty and a reasonable attorney's fee; or

(C) both of the actions described in clauses (A) and (B) may be taken;

if the user continues not to pay the delinquency and any penalty; and

(3) the procedure for resolving disputed bills.

The not-for-profit sewer utility shall adopt a procedure for resolving disputed bills, as described in subdivision (3), that includes an opportunity for a delinquent user to meet informally with designated personnel empowered to correct incorrect charges. Payment of a disputed bill and penalties by a user does not constitute a waiver of rights to subsequently claim and recover from the not-for-profit sewer utility sums improperly charged to the user.

(d) If the user fails to pay the delinquent amount or otherwise fails to resolve the charges as specified under subsection (c), the not-for-profit sewer utility or the utility's designee shall give written notice to the water utility serving the user to discontinue water service to the premises designated in the notice until notified otherwise. The notice must identify the delinquent user in enough detail to enable the water utility to identify the water service connection that is to be terminated. Upon receipt of the notice, the water utility shall disconnect water service to the user.

(e) Water service may not be shut off under this section if a local board of health has found and certified to the not-for-profit sewer

utility that the termination of water service will endanger the health of the user and others in or near the territory served by the not-for-profit sewer utility.

(f) A water utility that discontinues water service in accordance with an order from a not-for-profit sewer utility or the not-for-profit sewer utility's designee does not incur any liability except to the extent of the water utility's own negligence or improper conduct.

(g) If the water utility does not discontinue service within thirty (30) days after receiving notice from the not-for-profit sewer utility, the water utility is liable for any sewer rates or charges that are:

(1) incurred thirty (30) days after the water utility's receipt of notice to discontinue water service; and

(2) not collected from the user.

(h) In addition to the penalties set forth in subsection (b), a delinquent user may not discharge water into the not-for-profit sewer utility's sewers and may have the property disconnected from the not-for-profit sewer utility's sewers."

Page 2, line 3, delete "that water service may be disconnected if the user" and insert "that:

(A) water service may be disconnected;

(B) the board may bring a civil action to recover the amount due, together with any penalty and a reasonable attorney's fee; or

(C) both of the actions described in clauses (A) and (B) may be taken;

if the user continues not to pay the delinquency and any penalty; and".

Page 2, delete line 4.

Page 2, line 12, delete "If the user fails to pay the delinquent amount or otherwise" and insert "If:

(1) the user fails to pay the delinquent amount or otherwise fails to resolve the charges as specified under subsection (d); and

(2) the board opts to require that a water utility providing water service to the user discontinue water service to the user, as authorized by subsection (c);

the".

Page 2, delete line 13.

Page 2, run in lines 12 through 14.

Page 2, between lines 38 and 39, begin a new paragraph and insert: "SECTION 4. IC 34-30-2-23.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 23.5. IC 8-1-2-125.1(f) (Concerning discontinuance of water service by a water utility).**".

Page 2, line 41, before "IC 13-26-11-14.5(g)" insert "**Sec. 51.9.**".

- 1 Renumber all SECTIONS consecutively.
 (Reference is to ESB 213 as printed February 15, 2008.)

Representative Welch